

Uranium Watch

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via electronic mail

Ms. Vickie Southwick
Executive Secretary
Mining Program
Division of Oil, Gas and Mining
Utah Department of Natural Resources
P.O. Box 145801
Salt Lake City, Utah 84114-5801
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RECEIVED E-Mail

JUN 09 2015

Div. of Oil, Gas & Mining

RE: Utah Division of Oil, Gas and Mining Compliance and Enforcement of Temporary Cessation of Operation Statutes and Regulations..

Dear Ms. Southwick:

Attached please find a report on the Utah Division of Oil, Gas and Mining (DOGM) Enforcement of Temporary Cessation of Operation Statutes and Regulations. This Report is submitted in anticipation of an informal hearing to be held on June 19, 2015.

Uranium Watch is a public interest non-profit in Moab, Utah. We have been involved in uranium mining and milling issues in Utah and the 4-Corners region for many years.

Please let me know if you have any questions about this Report.

Sincerely,

/s/

Sarah Fields
sarah@uraniumwatch.org

cc: Dana Dean, DOGM
Enclosure: As stated

URANIUM WATCH REPORT

UTAH DIVISION OF OIL, GAS AND MINING — COMPLIANCE AND ENFORCEMENT OF TEMPORARY CESSATION OF OPERATION STATUTES AND REGULATIONS

The following is a discussion of the Utah Division of Oil, Gas and Mining's (DOGM's) enforcement of the applicable State of Utah statutes and regulations that apply to the temporary cessation of hard rock mining operations. Utah Code Ann. 40-8-16 and 40-8-21 and Utah Administrative Code R647-3-113 and R647-3-117.

The focus will be on uranium mines that are currently permitted by DOGM.

I. REGULATIONS

Pertinent Utah statutes and regulations require:

1. Utah Code 40-8-16. Approved notice of intention valid for life of operation -- Withdrawal, withholding, or refusal of approval -- Procedure and basis: *An approved notice of intention or approved revision of it remains valid for the life of the mining operation, as stated in it, unless the board withdraws the approval as provided in Subsection (2).*

Subsection (2)(c): *Approval may be withdrawn in the event that mining operations are continuously shut down for a period in excess of five years, unless the extended period is accepted upon application of the operator.*

Therefore, after 5 years of continuous shutdown, the operator is required to submit an application for continued operation, which must be accepted by DOGM.

2. Utah Admin. Rule R647-3-113.4, Suspension or Termination of Operations. (small mining operations): *The operator shall give the Division prompt written notice of a termination or suspension of small mining operations expected to exceed five (5) years. Upon receipt of notification the Division shall, within 30 days, make an inspection of the property.*

Utah Admin. Rule R647-4-117.3, Notification of Suspension or Termination of Operations. (large mining operations): *The operator shall give the Division prompt written notice of a termination or suspension of large mining operations expected to exceed five (5) years. Upon receipt of notification, the Division shall, within 30 days, make an inspection of the property.*

Therefore, an operator is required to notify DOGM of suspension of small and large mining operations expected to exceed 5 years. This section does not mention an application for continued operation, which must be accepted by DOGM.

3. Utah Admin. Rule R647-3-113.5: *Small mining operations that have been approved for an extended suspension period will be reevaluated on a regular basis. Additional interim reclamation or stabilization measures may be required in order for a small mining operation to remain in a continued state of suspension. Reclamation of a small mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of the 10-year period and shows good cause for a longer suspension period.*

Utah Admin. Rule R647-4-117.4: *Large mining operations that have been approved for an extended suspension period will be reevaluated on a regular basis. Additional interim reclamation or stabilization measures may be required in order for a large mining operation to remain in a continued state of suspension. Reclamation of a large mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of the 10-year period and shows good cause for a longer suspension period.*

These sections require the approval of an extended period of non-operation, which will be evaluated on a regular basis. It states that reclamation may be required after 5 years. It also requires that the operator submit an appeal to the Board prior to the expiration of the 10-year suspension period and show good cause for a longer suspension.

II. SOME ISSUES

1. When, exactly, do operations cease and the temporary cessation of operation commence? Does cessation commence when the mine operator is no longer removing ore from the mine? Or, does it commence when the mine operator is no longer actively maintaining the site, for example, venting and dewatering the mine? Do operations cease when there are no longer any workers at the mine or in the underground portion of the mine, as reported to the Mine Safety and Health Administration (MSHA)?

2. When, exactly, must the operator give prompt notice of the suspension of a mining operation expected to exceed 5 years? Is a notice to be submitted at the beginning of the non-operational period or at the end of the 5-year period?

III. ENFORCEMENT

Below are examples of enforcement and compliance with the Utah statutes and regulations applicable to temporary suspension of operations, as cited above.

1. **SAGE MINE (S0370058):** The Sage Mine is on land managed by the US Bureau of Land Management (BLM). The Sage Mine last operated in 1990. There has been a 25-year period of non-operation.

There is no evidence in the DOGM Mineral Files¹ that the operator ever submitted a request to the DOGM Board to extend the period of non-operation beyond 10 years. Such a request should have been submitted to the Board in 2000 and again in 2010.

During the lengthy period of non-operation, there was no approved Interim Management Plan, trash and waste was stored in buildings onsite, and a hazard developed at a collapsed portal. An Interim Management Plan for the Sage Mine was submitted in March 2014, after Uranium Watch brought the lack of required Interim Management Plans for mines on standby to the attention of the BLM.

2. TONY M MINE (M0170049): According to Energy Fuels Resources (USA) Inc. (Energy Fuels), the owner/operator, the Tony M Mine stopped producing ore in 2008. Energy Fuels notified DOGM of cessation of dewatering in November 2012, and there were no works on site after the 4th Quarter of 2012. However, Energy Fuels did not formally submit a Notice of Temporary Suspension to DOGM until March 18, 2014. So, it appears that, for purposes of compliance with DOGM regulations, the Tony M Mine operations ceased over a year after there were no workers at the site. The March 18, 2014, Notice of Temporary Suspension, was in response to a January 30, 2014, DOGM staff e-mail. On April 14, 2014, DOGM notified Energy Fuels that they approved the extended period of extension of the Tony M. On May 23, 2014, Energy Fuels submitted a letter that stated it supersedes the DRAFT Notice of Temporary Suspension sent to UDOGM on April 1, 2014 (it is unclear if they are referring to the March 18 Notice). The Energy Fuels Notice of Temporary Suspension and DOGM's response is the only example that I have found for a formal permittee Notice of Temporary Suspension and formal DOGM staff Approval of Temporary Suspension.

3. ENERGY QUEEN (M0370043), LA SAL COMPLEX (M0370026), PANDORA (M0370012), REDD BLOCK IV (M0370046), and RIM (M0370006) MINES:

In 2002 there was correspondence between the owner of the Energy Queen, La Sal Complex, Pandora, Redd Block IV, and Rim Mines, International Uranium (USA) Corp. (IUSA or IUC), and DOGM regarding a 10-year Extension of Suspension of Operations:

- May 10, 2002, DOGM informed IUC of the 5-year review of the reclamation sureties for the five Mines. DOGM requested updated maps that include: "buildings, stationary mining/processing equipment, roads, utilities, power lines, drainage structures (i.e. berms, culverts, ditches, canals, etc.), topsoil, ore and product storage areas, overburden/waste dumps, tailings or processed waste facilities, solid and liquid wastes, evaporation ponds, and wastewater discharge treatment and containment facilities, etc." The letter stated that DOGM understood that IUC had expressed an interest in approaching the Board of Oil, Gas and Mining to request an extension of its present suspension of operations for those mine sites.

¹ influx1.ogm.utah.gov/WebStuff/wwwroot/minerals/mineralsfilesbypermitinfo.php

DOGM indicated that bond adequacy was an important factor in consideration of an extension of suspension and requested that the information be submitted by June 10, 2002.

- May 22, 2002, IUC responded to DOGM with a letter regarding Extension of Suspension of Operations and indicated that the letter was IUSA's formal request to the Utah Board of Oil, Gas and Mining for an extension of the present suspension of operations. The letter included a "Review of Uranium Markets, Prices, and IUSA Operations."
- May 22, 2002, IUC also sent DOGM a request for a 60-day extension of time to submit the maps requested by DOGM on May 10.
- June 14, 2002, DOGM approved the extension of time to submit the requested maps and information to August 10. Additionally, DOGM informed IUC that they needed to make a formal Request for Agency Action to come before the Board to request the extension. DOGM cited Rule R647-4-117.4, which states: *The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of the 10-year period and shows good cause for a longer suspension period.* DOGM also informed IUSA that they would need the information gathered by DOGM for IUC's presentation to the Board. DOGM stated, "This would allow the Board to gain a clear understanding of the ramifications of allowing the sites to remain unreclaimed of an additional period of time."
- April 18, 2003, IUC submitted preliminary updated site maps for four of the five mines. The previous maps were 20 or more years old.
- March 12, 2004, DOGM requested additional information and clarification regarding the maps.
- Additional information was submitted on April 3, 2004, and the final maps were submitted on February 3, 2005. This is about 3 years after DOGM requested this information.
- April 22, 2005, DOGM requested additional information regarding the maps and reclamation surety estimates.

There is no indication in the Minerals Files that IUC ever submitted a formal Request for Agency Action to the Board requesting an extension of the suspension period for the Energy Queen, La Sal Complex, Pandora, Redd Block IV, and Rim Mines. Previously, Uranium Watch submitted a GRAMA request for such documents, and none were provided. Therefore, it is apparent that IUC never sent an appeal to the Board prior to the expiration of the 10-year period and requested extension of the period of suspension. The

Board never approved the extension of an extension of the 10-year standby period. Therefore, DOGM failed to enforce the requirements in R647-4-113.5 and R647-4-117.4.

Subsequently, IUC reopened the Rim, Pandora, and La Sal Complex (Snowball, La Sal, and Beaver Shaft) during the period of 2007 to 2009. The Rim suspended operation again in 2009 and the Pandora and La Sal Complex at the end of 2012.

4. ENERGY QUEEN (M0370043): The Energy Queen Mine, on private land, last operated in 1982. Even if the Board had approved an extension in 2002 or 2003, the mine has not commenced operation. There is no indication that, from 2012 to the present the current mine owner ever submitted a formal Request for Agency Action to the Board for an extension of the 33-year period of non-operation. There is no evidence of any 5-year Notice of Temporary Suspension or DOGM staff response.

Although the mine owner contemplated reopening the mine and cleaned up some of the old equipment and waste rock outside the site fence, there is no indication that will reopen any time in the near future. None of the major work necessary to reopen the mine had been accomplished, specifically the construction of a new wastewater treatment system and the pumping, treatment, and discharge of millions of gallons of water that have filled the underground mine workings since 1982, and the installation of monitoring wells. The waste rock pile remains unreclaimed. There is a lot of trash and pieces of old equipment scattered around the site (not visible from the road) and an unreclaimed lined wastewater treatment pond and two unreclaimed un-lined wastewater treatment ponds, which may hold radioactive materials. After over 30 years there is no justification for not requiring the complete reclamation of the Energy Queen Mine.

5. REDD BLOCK IV ((M0370046): Redd Block IV Notice of Intent was approved in 1980 by DOGM. The mine, on private land, has never been developed. There is no indication that it will ever be developed. The owner has never submitted a Request to the Board for an extended period of suspension of operations. The April 2014 DOGM Inspection Report states: "Discussed with Andrea [Reither, Energy Fuels,] the possibility of rolling this site into Energy Queen permit and closing this one out. Due to prolonged period of inactivity (since 1997) and never being fully developed, this may require reclamation under R647-4-117."

As is often the case with DOGM inspection reports, there is no indication that DOGM staff ever followed up on this recommendation. No letter was sent regarding need to go to the Board after 10 years of non-operation. Probably embarrassing at this late date to all of a sudden mention that requirement.

Given the length of non-operation of the Energy Queen and failure of both mines to comply with the extension of suspension requirements, I do not believe that the Redd Block IV should be combined with the Energy Queen. Both mines need to be reclaimed.

6. RIM MINE (M0370006):

The Rim Mine suspended underground operations at the end of the second quarter of 2009, over 5 years ago. There is no evidence of any 5-year Notice of Temporary Suspension or DOGM staff response. Energy Fuels closed portals, removed equipment, left doors to buildings unlocked, left accumulated trash in buildings, and eventually ceased dewatering the mine. Cows roam freely at the unfenced mine site.

IV. CONCLUSION

1. There is no evidence that any of the currently permitted uranium mines that have maintained, or currently maintain, a suspension period of over 10 years have ever received Board approval to extend the period of non-operation. It is apparent that the DOGM staff and the DOGM Board have not demanded compliance with the provisions in R647-3-113.5 and R647-3-117.4: *The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of the 10-year period and shows good cause for a longer suspension period.* It is apparent that DOGM staff never required complete reclamation of a uranium mine site when the suspension period exceeded 10 years and the permittee did not submit an appeal to the Board and have such an appeal approved by the Board. Failure of the DOGM staff and the Board to act means that the applicable rules are meaningless.
2. It is apparent that, with few exceptions, no uranium mine owner has given prompt written notice of suspension of a small or large mining operation expected to exceed 5 years. For the most part, DOGM staff does not issue letters of acceptance of the notification of 5-year non-operation period. Therefore, DOGM does not enforce the statutory provision at Utah Code Ann. 40-8-16(2)(c), which states: *Approval may be withdrawn in the event that mining operations are continuously shut down for a period in excess of five years, unless the extended period is accepted upon application of the operator.*
3. Clearly, the existing DOGM regulations regarding temporary suspension of operations are inadequate. They are vague, have no teeth, and allow for decades-long periods of non-operation with no effective means of requiring reclamation or even effective site-maintenance practices. The rules are not being enforced and must be revised.

V. REQUEST FOR REMEDY

Uranium Watch Requests that:

1. DOGM staff and the Division Board immediately start enforcing the existing statutes and regulations applicable temporary suspension of operations for small and large hard rock mining operations in Utah.

2. DOGM staff clarify the definition of suspension of operations and request that mine operators provide a notice of suspension of operations at the time that operations cease, as a courtesy. (The regulation stating that they do not have to do this can be amended later.)
3. DOGM staff clarify when an operator must provide notice of the suspension of a mining operation expected to exceed 5 years.
4. DOGM develop a generic letter and send to all mine operators explaining the 5-year and 10-year extension of non-operation notice and approval processes.
5. DOGM immediately notify those mine owners that have not submitted a timely request for an extension of a 10-year period of non-operation to the Board that they must commence reclamation, as required by law.
6. DOGM review all small and large mine permits to determine compliance with Utah Code Ann. 40-8-16(2)(c) and Rules R647-3-113 and R647-3-117 with respect temporary cessation of operation.
7. DOGM commence a review of Rules R647-3-113 and R647-3-117 with respect temporary cessation of operation and DOGM staff's enforcement of those rules with the intent of understanding the history of compliance and enforcement and the proposing of new rules. Uranium Watch would like to be part of the process to develop a new set of comprehensive, enforceable rules applicable to the temporary cessation of operation of small and large mining operations. The new rules must be protective of the public health and safety and the environment. An example of more comprehensive rules applicable to periods of non-operation are those adopted by the State of New Mexico.

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